No. 10-1168

IN THE

Supreme Court of the United States

WILLIAM HAWKINS,

Petitioner,

v.

CITICORP CREDIT SERVICES, INC.,
MARGOLIS, PRITZKER, EPSTEIN & BLATT, P.A.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT CITICORP CREDIT SERVICES, INC. (USA)

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QUESTIONS PRESENTED

1. Whether the Fourth Circuit Court of Appeals correctly affirmed the decision of the District Court of Maryland in this action -- i.e., that South Dakota law "fixes" interest rates within the meaning of the National Bank Act, 12 U.S.C. § 21, *et seq.* (the "NBA"), and, as a result, a separate, 7% interest cap under the NBA does not apply to the rates of interest contractually agreed to by Citibank (South Dakota), N.A. ("Citibank"), a national bank, and its credit card customers.

2. Whether Petitioner has presented compelling reasons to grant the Petition to review the District Court's decision that Petitioner's complaint fails to state a claim for violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, and the Maryland Consumer Debt Collection Act, Md. Comm. Code § 14-201, *et seq.*, because Citibank was not, and is not, prohibited from charging interest at a rate in excess of 7% on its credit card accounts under South Dakota law.

3. Whether Petitioner has presented compelling reasons to grant the Petition, where the District Court, applying the doctrine of *res judicata* under Maryland state law, concluded that Petitioner's claims are barred by a judgment obtained by Citibank in a prior action against Petitioner to recover the outstanding balance owed on his credit card account.

RULE 29.6 STATEMENT

Respondent Citicorp Credit Services, Inc. (USA) is a subsidiary of Citibank (South Dakota), N.A., which is a subsidiary of Citigroup Inc., a publicly traded corporation. No corporation or publicly held company owns 10% or more of Citigroup Inc.

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INTRODUCTION

Very simply, the instant Petition for Writ of Certiorari (the "Petition") is meritless. For over 100 years, it has been established that, under the National Bank Act, 12 U.S.C. § 21, *et seq.* (the "NBA"), a national bank may charge interest at the highest rate permitted by the state in which the bank is located. *See* 12 U.S.C. § 85 (providing, in pertinent part, that a national bank may charge interest on loans "at the rate allowed by the laws of the State . . . where the bank is located"); *Tiffany v. Nat'l Bank*, 85 U.S. (18 Wall) 409, 412, 21 L. Ed. 862 (1874) (stating that national banks are "empowered to reserve interest at the same rates, whatever those rates might be, which were allowed to similar State institutions"); *Daggs v. Phoenix Nat'l Bank*, 177 U.S. 549, 555, 20 S. Ct. 732 (1900) (holding that the "intention of the [NBA] is to adopt the state law, and permit to national banks what the state law allows to its citizens and to the banks organized by it"); *see also* 12 C.F.R. § 7.4001(b) (a regulation issued by the Office of the Comptroller of the Currency, which supervises national banks; "A national bank located in a state may charge interest at the maximum rate permitted to any state-chartered or licensed lending institution by the law of that state.").

It is equally well settled that a national bank may "export" its home-state interest rate to accounts, including credit card accounts, held by individuals residing in states other than the state in which the national bank is located. *See Marquette Nat'l Bank v. First of Omaha Serv. Corp.*, 439 U.S. 299, 318, 99 S. Ct. 540, 58 L. Ed. 2d 534 (1978) (holding that the "exportation" of interest rates "has always been implicit in the structure of the [NBA], since

citizens of one State were free to visit a neighboring State to receive credit at foreign interest rates"); *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 737, 744, 116 S. Ct. 1730, 135 L. Ed. 2d 25 (1996) (stating that § 85 "authorizes a national bank to charge out-of-state credit-card customers an interest rate allowed by the bank's home State, even when that rate is higher than what is permitted by the States in which the cardholders reside").

Furthermore, this Court and other courts consistently have held that, where state law allows lenders and borrowers to contract for any rate of interest, then, under such law, any rate agreed upon is thereby "fixed" by the state law. *See Daggs*, 177 U.S. at 555; *see also Hiatt v. San Francisco Nat'l Bank*, 361 F.2d 504, 507 (9th Cir. 166). Thus, while the NBA includes a separate provision capping interest at 7% when the law of the state in which the national bank is located does not "fix" a rate, that cap is not applicable where state law allows a national bank to contract for *any* rate of interest on a credit obligation. *See Daggs*, 177 U.S. at 555; *Hiatt*, 361 F.2d at 507.

In the underlying proceedings, petitioner William A. Hawkins ("Petitioner") asserts that respondent Citicorp Credit Services, Inc. (USA) ("CCSI (USA)"), a subsidiary of Citibank (South Dakota), N.A. ("Citibank"), violated state and federal law by seeking to collect interest in an amount exceeding 7% on his defaulted Citibank credit card account (the "Account") in a prior debt collection action.[1]

1. CCSI (USA) is a subsidiary of Citibank and, while its principal function is not debt collection, from time to time, CCSI (USA) collects debts belonging to, and performs other functions on behalf of, Citibank. Pet. App. at 6a. The NBA extends to a national bank's subsidiaries. *See, e.g., Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 16-21, 127 S. Ct. 1559, 167 L. Ed. 2d 389 (2007).

According to Petitioner, Citibank was limited to 7% by the NBA because South Dakota does not "fix" a rate within the meaning of the NBA. The District Court rejected that argument, relying upon the well-settled and established authority cited above.

Accordingly, the Petition presents no question that is either compelling or not already answered by existing precedent. Citibank is a national bank located in South Dakota. Under South Dakota law, there is no maximum interest rate restriction between parties to a written agreement, expressly including a credit card agreement, and Petitioner was charged interest in accordance with such agreement. Thus, the 7% interest cap under the NBA does not apply, as a matter of law, and the interest assessed to Petitioner was entirely proper.

Further, Petitioner cannot obtain review here of the District Court's application of the doctrine of *res judicata* under Maryland law to the facts of this routine case. Certiorari is not warranted where the "asserted error consists of . . . the misapplication of a properly stated rule of law." Sup. Ct. R. 10.

Petitioner plainly fails to carry the burden of demonstrating that there are any compelling reasons for this Court to grant the Petition. The Petition therefore should be denied.

STATEMENT OF THE CASE

On May 12, 2008, Citibank obtained a judgment in the District Court of Baltimore City (the "Collection Action") against Petitioner to recover the unpaid balance

owed on the Account (the "Judgment"). The unpaid balance included an amount of interest assessed at a rate in excess of 7%, as provided for in the governing credit card agreement. Pet. at 2. The Judgment was affirmed on appeal to the Maryland Circuit Court and the Maryland Court of Appeals denied Petitioner's Petition for Writ of Certiorari. Pet. App. at 6a–7a.

With his state court appellate avenues exhausted, Petitioner filed the underlying putative class action against respondents CCSI (USA) and Margolis, Pritzker, Epstein & Blatt, PA ("Margolis")[2] (together with CCSI (USA), the "Respondents"), alleging that Respondents improperly commenced the Collection Action against Petitioner and other actions against other debtors on behalf of Citibank to recover amounts of interest on Citibank credit card accounts assessed at rates in excess of 7%. Pet. App. at 6a. Petitioner asserted claims under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* and the Maryland Consumer Debt Collection Act, Md. Comm. Code § 14-201, *et seq.*

On October 23, 2009, the District Court granted Motions to Dismiss by Respondents, dismissing both claims on two separate grounds. *See* Pet. App. at 13a-20a. On December 21, 2010, the Fourth Circuit affirmed this decision in an unpublished *per curiam* opinion (the "Opinion"). Pet. App. at 1a–2a.

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2. Margolis was the firm that represented Citibank in the underlying Collection Action. Pet. App. 6a.

REASONS FOR DENYING THE PETITION

Petitioner satisfies none of this Court's criteria for certiorari. The Opinion does not conflict with a decision of this Court or another Court of Appeals, and Petitioner does not (and could not) demonstrate that the Fourth Circuit decided an important federal question that has not been addressed by this Court or in a way that conflicts with a decision of this Court. *See* Sup. Ct. R. 10(a)-(c). Instead, Petitioner simply disagrees with thoughtful, well-reasoned precedent under the NBA that has existed for over 100 years. The fact that the Fourth Circuit did not see fit to publish the Opinion underscores the lack of importance of this case. Moreover, Petitioner is not entitled to review here of the application of the state-law doctrine of *res judicata* to his claims. As a result, the Petition should be denied.

I. THE OPINION IS ENTIRELY CONSISTENT WITH EXISTING PRECEDENT UNDER THE NBA.

Under the long-existing precedent referenced above, where applicable state law allows a national bank to contract for *any* rate of interest on a credit obligation, such rate of interest is authorized under federal law. Then, in turn, any rate agreed upon is "fixed" by the state law, and the 7% interest rate cap under the NBA does not apply. *See Daggs*, 177 U.S. at 555; *see also Hiatt*, 361 F.2d at 507 (holding that California and Arizona law "fixed" rates "as without limitation except such as may be established by agreements between the banks of the two states and those who borrow from them"); *Commissioner of Small Loans v. First Nat'l Bank of Maryland*, 268 Md. 305,

313, 300 A.2d 685 (Md. 1973) (citing *Daggs* and noting that, "where the law of the territory prescribed a 7% interest rate in the absence of an agreement otherwise, but permitted the parties to contract for any rate of interest, the [NBA] allowed national banks to so contract beyond the 7% limit"); *Keresey v. Nevada Nat'l Bank*, 98 Nev. 315, 316, 646 P.2d 1224 (Nev. 1982) (holding that national bank in Nevada could charge interest on specific type of loan where state statute authorized such loans to be made at "any rate of interest"); *see, e.g.*, *Citibank (South Dakota), N.A. v. Shapiro*, No. 10-ADMS-10027, 2010 WL 5550646, *2-3 (Mass. App. Div. Dec. 22, 2010) (relying upon *Daggs* and holding that, "[u]nder South Dakota law, an unlimited rate of interest is "allowed," i.e., "fixed," and thus may be charged by Citibank as a national banking association headquartered in that state.").

Here, South Dakota law "allows" a regulated lender (like Citibank) to contract with its customers to charge any rate of interest. *See* S.D.C.L. § 54-3-1.1 (providing that "there is no maximum interest rate or charge, or usury rate restriction between or among persons, corporations, . . . associations, or any other entities if they establish the interest rate or charge by written agreement"). In addition, under South Dakota law, as a national bank, Citibank is a "regulated lender" and therefore "exempt from all limitations on the rate of interest which [it] may charge and [is] further exempt from the operation and effect of all usury statutes . . . ." S.D.C.L. § 54-3-13; *see also* S.D.C.L. § 54-3-14(2) (defining as a "regulated lender" under S.D.C.L. § 54-3-13 a "bank organized pursuant to 12 U.S.C. § 21"). Accordingly, pursuant to South Dakota law, there is no maximum interest or usury rate restriction between parties to a written agreement, expressly

including a credit card agreement. *See Citibank, South Dakota, N.A. v. Palma*, 646 S.E.2d 635, 640 (N.C. App. 2007) (holding that 19% interest rate was in compliance with South Dakota law); *see also Shapiro*, 2010 WL 5550646, *2-3 (relying upon *Daggs* and holding that the interest rates charged by Citibank are proper under the NBA and South Dakota law).

In seeking review, Petitioner contends that South Dakota does not "fix" the interest rates that national banks may charge. Petitioner asserts that South Dakota Codified Law § 54-3-13, which exempts national banks from limitations on the rate of interest they may charge and the effect of state usury statutes, should be interpreted as superseding South Dakota Codified Law § 54-3-1.1. Pet. at 2. Put differently, Petitioner interprets these provisions to mean that the NBA limits the interest rates that national banks located in South Dakota may charge to 7%.

But Petitioner's interpretation is neither cogent nor correct. In fact, this very argument was specifically rejected in *Daggs* and by the District Court. Indeed, the District Court correctly reasoned that Petitioner's interpretation violates the fundamental proposition in *Tiffany*, as later followed in *Daggs*, that national banks must be placed on equal footing with state lending institutions: "In fact, consistent with this understanding of the [NBA]'s purpose, *Daggs* appears to essentially read the word 'fixed' out of the [NBA] by construing the relevant clause to mean that interest rates are capped at seven percent only when no interest is allowed by the laws of the state. [Citation.] South Dakota law, under [Petitioner's] interpretation, allows banks to charge an

unlimited interest rate. Therefore, just as a state 'fixes' a rate by allowing parties to contract at any rate they wish, South Dakota would still 'fix' a rate if it allowed 'regulated lenders' to charge any interest rate even in the absence of a contractual agreement." Pet. App. at 13a-14a.

While Petitioner disagrees with the result in this action, that disagreement does not give rise to grounds for review here. Certiorari is not warranted to review the application "of a properly stated rule of law" to the facts of a particular case. *See* Sup. R. Ct. 10; *accord U.S. v. Johnston*, 268 U.S 220, 227 (1925). The Petition should be denied.

II. PETITIONER IS NOT ENTITLED TO REVIEW OF THE DISTRICT COURT'S APPLICATION OF THE DOCTRINE OF *RES JUDICATA* TO THE FACTS OF THIS CASE.

Contrary to Petitioner's suggestion, nothing in the Opinion attempts to "rewrite . . . Maryland's *res judicata* law." Pet. at 4. Applying Maryland law on the doctrine of *res judicata*, the District Court concluded that Petitioner's claims were barred by the judgment previously obtained by Citibank. The reasoning was straightforward: a judgment in Petitioner's favor below impermissibly "would negate, contradict, and nullify" the prior judgment. Pet. App. at 20a–21a.

Importantly, Petitioner does not contend that the District Court applied the wrong standard or test for *res judiciata* under Maryland law. Instead, again, he simply disagrees with the result, and also states that he is not "specifically" seeking to vacate the judgment. As aptly

noted by the District Court, however, that "is a distinction without a difference" as a "judgment in [Petitioner's] favor ... is necessarily incompatible with the prior judgment that [he] owed interest over seven percent." Pet. App. at 21a. Once more, Petitioner does not present a legitimate issue for review.

CONCLUSION

For the foregoing reasons, CCSI (USA) requests that the Court deny the Petition in its entirety.

Respectfully submitted,

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